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Administration of justice at the United Nations

Administration of justice

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the outcome of the work of the Joint Appeals Board during 2007 and 2008 and between January and June 2009 and statistics on the disposition of cases and work of the Panel of Counsel (A/64/292), as well as his report on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/64/314). During its consideration of the reports, the Committee met with representatives of the Secretary-General, who provided additional information and clarification.

II. Outcome of the wc . of the joint appeals boards during 2007 and 2008 and between January and June 2009 and statistics on the disposition of cases and work of the Panel of Counsel

2. Pursuant to resolution 63/253, the General Assembly decided to abolish the joint appeals boards and the joint disciplinary committees as of 1 July 2009. The report of the Secretary-General (A/64/292) is therefore the last report on the work of these bodies.

3. The Advisory Committee notes that there was a small increase in both the number of appeals filed and the number of cases disposed of by the joint appeals boards in 2008 (see table 1 of A/64/292). As indicated in paragraph 8 of the report, there was a more than threefold increase in the number of disciplinary cases referred to the New York Joint Disciplinary Committee (from 32 in 2007 to 102 in 2008). The number of appeals and suspension of action cases filed and disposed of by all joint appeals boards in the period from January to June 2009 is shown in table 4 of

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the report. Upon enquiry, the Committee was informed that a total of 142 cases had been transferred to the three United Nations Dispute Tribunal registries from the joint appeals board/joint disciplinary committee secretariats in Geneva, Nairobi and New York. Since 1 July 2009, 68 new cases have been filed and 21 cases have been decided, leaving 178 pending cases as at 30 September 2009.

4. A total of 384 new cases were brought to the Panel of Counsel in New York in 2008, an increase of 13.3 per cent in comparison with 2007. Of these, 286 went through the formal appeals process and 98 were dealt with informally.

5. Upon request, the Advisory Committee was provided with information concerning monetary compensation recommended by the Joint Appeals Board between 1 January 2007 and 30 June 2009. It was informed that, during that period of two and a half years, the New York Joint Appeals Board submitted reports for 172 appeals, of which 167 received a decision by the Secretary-General. In 56 of those cases, the Joint Appeals Board recommended monetary compensation in favour of the appellants. The Secretary-General fully or partially accepted 33 of those cases and authorized the payment of a total of 177 months, or nearly 15 years, of net base salary. **The Advisory Committee recommends that similar information concerning the joint appeals boards in Geneva, Nairobi and Vienna be provided to the General Assembly at the time of its consideration of the report of the Secretary-General. Furthermore, an analysis of monetary compensation awarded and indirect costs associated with an appeal (such as staff time) should be provided in the next report on the administration of justice. Such an analysis should include identification of those aspects of staff administration that give rise to a large number of appeals and should compare data from the old system with data from the new system.**

6. The Advisory Committee was also informed, upon enquiry, that the Organization had made a clear distinction between instances when a financial loss was a result of gross negligence and instances when a financial loss resulted from an inadvertent error, oversight or inability to foresee the negative consequences of a chosen decision. Under the former system for the administration of justice, cases involving the accountability of officials for causing financial loss to the Organization were addressed under former staff rule 112.3, which reads: "Any staff member may be required to reimburse the United Nations either partially or in full for any financial loss suffered by the United Nations as a result of the staff member's negligence or of his or her having violated any regulation, rule or administrative instruction." The appeals process focused, however, on whether the rights of the staff member seeking redress had been violated and did not include provision for a determination as to whether the actions of the decision maker had amounted to a violation of former staff rule 112.3.

7. The Advisory Committee enquired about measures in place under the new system for the administration of justice to provide for the accountability of officials for causing financial loss to the Organization. The Committee was informed that the new system provided for such links to accountability as management evaluation, which is the mandatory first step of formal proceedings. The Committee was informed that management evaluation was linked to individual managerial accountability through a series of measures, such as individual performance appraisals, senior managers' compacts, the human resources action plan, possible withdrawal of delegation of authority for decision-making, if warranted, and the

initiation of an investigation when the record indicated possible misconduct. Furthermore, the United Nations Dispute Tribunal may also refer appropriate cases to the Secretary-General for possible action to enforce accountability.

III. Activities of the Office of the United Nations Ombudsman and Mediation Services

8. The Advisory Committee notes that the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services is the first joint report for the entities covered by the Office: the United Nations Secretariat, funds and programmes and the Office of the United Nations High Commissioner for Refugees (UNHCR). The report covers activities during 2008. The Committee notes that reporting periods for the various entities covered by the Office have been aligned to permit consolidated reporting. It should be noted, however, that there was limited ability to compare issues throughout the constituency because case categorization schemes used by the Secretariat differed from those used by its counterparts. A common scheme is being used as of 2009, which will enhance identification of cross-cutting issues.

9. The Advisory Committee notes that, overall, there has been an increase in the volume of cases (2.1 per cent), with the total number reaching nearly 1,400 in 2008. The majority of cases emanated from country offices, field offices and peacekeeping operations (roughly 74 per cent). The Committee was informed that the regional branch offices, which are to be based in Bangkok, Geneva, Khartoum, Kinshasa, Nairobi, Santiago and Vienna, should be up and running within four to six weeks and that, with their establishment, it was anticipated that the number of cases would increase. **The Committee expects that, once the regional branch offices become operational, the need for travel from Headquarters should diminish**. Upon request, the Committee was provided with a table on the number of cases opened and closed during 2008 and closed as at 1 October 2009 (see annex).

10. Chapter IV of the report of the Secretary-General identifies some systemic issues inherent in all the entities that the Office serves, including concerns related to (a) career progression and development; (b) leadership and managerial effectiveness; (c) the investigative process for alleged misconduct; and (d) interpretation of academic qualifications. **The Advisory Committee emphasizes the importance of interaction between the Office of the United Nations Ombudsman and Mediation Services and other parts of the Secretariat, such as the Office of Human Resources Management, to ensure that systemic issues are adequately addressed. In this connection, the Committee reiterates its view that the Secretary-General should report regularly to the General Assembly on actions to address the findings of the Ombudsman on systemic issues (see A/63/545, para. 40)**.

11. As at 1 July 2009, the Office of the United Nations Ombudsman and Mediation Services has been providing mediation services in support of the formal system for the administration of justice. The Mediation Division is in the process of developing its own guidelines and standard operating procedures following consultation with key stakeholders in the system for the administration of justice. As indicated in paragraph 13 of the report of the Secretary-General, the integrated Office is establishing a roster of mediators to provide dispute resolution services as

may be required. The roster will eventually be extended to serve the regional branch offices. **The Advisory Committee believes that mediation is an important role for the Office. The Committee notes these initiatives and stresses the importance of expeditious development of the above-mentioned guidelines so that the Office can become fully operational as soon as possible.**

IV. Other matters

12. The Advisory Committee recalls that the General Assembly decided to compensate the judges of the United Nations Appeals Tribunal on a per-case basis (see resolution 63/253). No provision was made for other entitlements related to travel and subsistence. **The Advisory Committee recommends that, at an appropriate time, the General Assembly may wish to look into this matter.**

Annex

Office of the United Nations Ombudsman and Mediation Services: number of cases opened during 2008 and number of cases closed as at 1 October 2009

The integrated Office of the United Nations Ombudsman and Mediation Services opened 1,325 cases in 2008. Of this total, 1,205 cases are closed as at 1 October 2009. The breakdown of cases is as follows:

Office of the Ombudsman and Mediation Services	*Number of cases opened in 2008*	*Number of cases closed as at 1 October 2009*
Secretariat	787	714
Funds and programmes	379	340
UNHCR	159	151
Total	**1 325**	**1 205**